P ✓

G R S IX 5]
Previous references

1919-20
(Mar l)

File No 68-19
Serial Nos 2, 3, 4, 5, 9, 11, 12, 13, 14 & 15

Later references

GENERAL AND REVENUE SECRETARIAT

✓

Serial Nos 2 to 5, 9, 11 to 15

Part B for May to 21

SUBJECT

Amendment of Sec 77 of Municipal Regulations

8(15) From the D C Kaira, Bk. to the D S
Further opinion in the matter of amending Section 77 of the Bombay Municipal Regulations

Member's order "Paragraphs dropped for" C. Secretariat

Mr Abdur Rahman
3186

WD 788—G I B—5 000

G R S. III—1]

GENERAL AND REVENUE SECRETARIAT

(ml)

NOTES

ml File No. 66-

FILE HEADING

Amendment of Sec 77 of Sal Regulations

From

No.	Dated	Received
Diary No	Enclos / Spare Copies	Serial No

BRIEF ABSTRACT OF LETTER

NOTES AND ORDERS

(1) Extract from file no sal 38-8 second numbers order —

Para 26 I think Sec 77 should be amended so as to make it clear that the fine should be imposed by a

NOTES—First Sheet

G R S III 2]

General and Revenue Secretariat

File No 68 of 1919 1554

Serial No.

To the Dy Comrs of Hassan & the Presidt.
of City Municipality of Bangalore
& Mysore —
No R 3691-700 & 18-9-19

Forward an extract containing the views of Govt thereon regarding cases falling under Sections 77 & 77 A Agrl Regulation & calls for their opinion for amending the wording of Section 77

2 From the Dc Chitaldrug
No D Dis No 28 & 29 & 19
Concurs with the opinion of Govt

3 From the Dc Bangalore
No C 4(9 & 30 & 19
Recommend the deletion
of Sec 77 of the Agl Regn

4 From the Dc Tumkur
No 500 & 29 10 19
Recommends the amendment
of Sec 77 of Agl Regulation

NOTE—Contn sheet

G R S III 2]

1660

General and Revenue Secretariat | File No. | of 191

Serial No

To the Secretary
No RE 57 d 12 12 9

States that the words shall be punishable according to Sec 77 appear to be exclusive & that no fines could be imposed only after judicial trial by Magistrate & by having jurisdiction in the case

On receipt of reply from other 4 Dy Comrs it will be added in the form of a statement & submitted for orders

CT
22/12

4

Yes Remind them in Ten

MK
22/12

Sec

Tel
22/12

Public have been received from four Districts

Draft reminding the DCs of other Dists and the Presds of Bangalore & Mysore city Mcl Councils is sent for approval —

MKS
18/12/20

18/12/20

16/12/20

NOTE Contn sheet

P70

G. R. S. III 2]

General and Revenue Secretariat. | Rev File No. 68 of 1919

Serial No

15 No reps have yet been received from the Dcs of Mysore & Kadur &
No draft for a reminder to Subd for approval -
Secy
7/9/20
Rev
8/9/20

2 The D C Chitaldrug 20 Dy 28/9/20 Dy 20 9 19 Subs
3 D C Shimoga C 4/9 1/9 20 Dy 30 9 19
4 D C Tum Kur Dy 500/9 20 Dy 20 9 19
5 D C Shimoga 4 C 57 Dy 12/12 19 Do
9 D C Kolar Dy 180/9 20 Dy 18 9 20 Do
11 Hon'ble President, Mysore City Rly 180 Dy 15/9 20 Do
12 Hon'ble President, Bangalore Rly 263 Dy 21 9 20 Do
13 D C Hassan Distt ROC 634/9 Dy 22/9/20 Dy
14 D C Mysore Dt Dy 215/6 Dy 9 2 21 Dy
15 D C Kadur Dt 250/20 Dy 6 9 20 Do

All the Dcs & the two Presidents' timescales agree with the first alternative in the new Rule by which is meant that the mere mention of words "on conviction before a Magistrate" in Sec 77 of the Mysore Regn

NOTE—Contn sheet

G R S III 2]

General and Revenue Secretariat | ML File No 68 of 19[illegible]

Serial No.

does not authorise the [illegible] to impose a fine

They are according to opinion that the [illegible] may be added in that section so as to clear the ambiguity now existing the amendment seems to be necessary & action has accordingly to be taken in the Legis Branch of the Chief

With regards empowering the ML Cls to compound offences connected with the sampling of drinkable foods etc, action has been taken in connection with the recent bill for amending the ML Regn, which was published for criticism

[illegible] orders in respect to paras one & supra

[illegible]
11/4/17

[illegible]
11/4

[illegible]

NOTE—Contn sheet.

7596

G R.'S III 2]

General and Revenue Secretariat | Rev File No. 68 of 19[illegible]

22279 Serial No.

Legn. Br.) 15/5/74 20/4

Subd Reference is invited to Rule 11 Members order quoted on the first page of these notes and to para 2 of the letter of 13/9/19 to the Dy. Comr. of DG & President of the Taj Municipality

The opinions received have not been subd to the Member yet. It is usual in such cases to decide, in the first instance in the administrative branch whether legislation is necessary and then send the file to the Legn. Branch for drafting a Bill.

The file may, it seems, be returned to the Rev. Secty. Opinion is not unanimous regarding the necessity for legislation.

26/4

Please see Dy. Comr's letter to Rev. Secty. dated 7.11.19

Rev. Secty.

Dy. Secy. 15/5/74

Submitted

Legn. Member) 23/5

Member's opinion on the record

23/5

19/5/74

Hd

66 Cal 23/5/74

Note Contn sheet.

G R S 19]

General and Revenue Secretariat. | File No of 191

Serial No

Extract from our file no 38 '17 12-9
The opinion of the Govt Advocate

The difference in the wordings of sections 77 and 77 A of the Municipal Regulation the latter of which expressly mentions that the conviction shall be by a Magistrate while the former does not, has perhaps led the President of the Municipality to believe that he had jurisdiction to impose the fine himself

The order under reference is, in my opinion not legal The consequences of levying a fine under section 77 are likely to be more serious as against the offenders than those arising under Section 77 A and the legislature which has clearly provided that in the latter case the offending party shall be tried by a Magistrate cannot be considered to have laid down quite a different procedure for offences under Section 77 Moreover any construction of the -- enactment which is likely to have the effect of -- combining the functions of the prosecution and the Judge in the same authority would be clearly unreasonable and unjust

Nor is there any provision in the Regulation or the rules or bye-laws framed thereunder which expressly confers such powers of inflicting fines either o the Municipal Council itself or on the President

Under these circumstances the mere non-mention of the words " on conviction before a Magistrate " does not in my opinion warrant the view that the President has the power of imposing any penalty without placing the matter before a Magistrate

Note Contn sheet

G R S 12]

General and Revenue Secretariat. | File No | of 191

Serial No

The powers specified in Section 174 are clearly intended to empower the Deputy Commissioner to interfere with and stay the execution of, orders or -- resolutions of the kind reported to therein and to report such matters to Government for orders I am therefore of opinion that the Deputy Commissione has the power under Section 174 to stay the execution of the order under reference and to report the matter to Covernment for final orders

B/R Lankaranarayana Rao
30/July 919 Govt Advocate

Note of the second number

I think Rule 77 should be amended to make it clear that the fine should be imposed by a magistrate. The views of the city municipalities & by laws may be consulted

to be transferred to a separate file

DS/ 31/8

5/8/19

NOTE—Contn sheet

L

1/7

No R 3691-700 B715 94.

Conf cards

vol 68-19-52 1

L B 13 9B

The deputy comm of lands & forests of the Colony

Sir

I am directed to forward herewith an extract copy of the views of the Govt of Rhodesia in regard to the respective jurisdictions of the Privy Council of the Supreme Court of Southern Rhodesia in dealing with cases falling under Sections 77 & 77A of the Const Regn. The difference in the wording of the sections in question has led to the assumption by the Privy Council of jurisdiction, in appeals from decisions of the Supreme Court in which the objects of the Legislature would seem to require such

information of fines to be only
by a majority

I am to request you
therefore to favour Court
with your views in the
matter in order to enable
Court to consider the question
of amending the wording
of the section accordingly

I have the

[illegible]

22 8 19

For Reg Long

2 24-9-19 ml 68-19- 2

Office of the Deputy Commissioner,
Chitaldrug District

Dated Chitaldrug, 20th September 1919

G. Venkata Rao Esquire B A ,
Deputy Commissioner,
C H I T A L D R U G

B Ramaswamaiya Esquire B A ,B L ,
Secretary to the Government of
H H the Maharaja of Mysore,
Revenue Department, Bangalore

Adverting to your letter No R 3691-700/M1 68-19-1 dated September 1919 callin for my views regarding the suitability rwise of amending the wording of section 77 A of the Mysore ipal Regulation, I have the honor to state that I concur with opinion of the Government that the mere non-mention of he words/is iction before a Magistrate" does not warrant the view that ident has the power of imposing any penalty himself se tion 161 also gives power only to Magistrate to re e er the alty as fine imposed under the Regulat on or order any law in e

I ha e the honor to be,
S i r,
Your mos obedi e ser ant,
Deputy Commissioner,
Chitaldrug District

S V

From The Secretary Commissioners of Customs
Chief Secretary Scotland

To The Secretary to Government
Revenue Department

Dated
Despatched
Received
Original No.
No.
Enclosures No.

Forwarding a Memorandum
regarding the Admissibility
or otherwise of exemption
in favour of Officers
of the Customs Department
from Municipal Taxation

Mr KG.

Dno 2476/7-10 M ml68-19-sl3

Office of the Deputy Commissioner,
Bangalore District
Dated Bangalore, 29th September'19

G Aravamudu Iyengar, Esq., B A , B L ,
Deputy Commissioner,
Bangalore District

To

B Ramaswamaiya, Esq , B A , B L ,
Secretary to the Government of His Highness
the Maharaja of Mysore, Revenue Department

Sir

Adverting to your letter No R 3691-700/M1 68-19-1, dated 15th September 1919, calling for my views on the scope of section 77 of the Municipal Regulation I have the honor to state that section 77 seems to be distinguishable from Sec 72 , the former applying to cases where the smugglers have been caught in the very act However it seems to be correct not to grant a penal power to a body acting for the protection of its own revenues This view seems to be supported by the decision of the Chief Court in Gotiabhand Vs Government of Mysore(21 Mys C J 50) and it has also been expressly laid down by Government, in their order No Sl61-8 M1 127-11-2 dated 2nd November 1911 To remove any ambiguity the wording of the section may be suitably altered

I have the honor to be
Sir
Your most obedient servant

G Narayanan

for Deputy Commissioner,
Bangalore District (on tour)

L.S.R
I

9663

1919-20

From
The Deputy Commissioner
Bangalore D[istrict]

To
The Secretary to the
Government of Mysore
Revenue Dept.

Dated 30th September 1919
Despatched
Received 8 OCT 1919
General No. C 419/19-20
No. L 5

Enclosure No.

92 Requesting sanction regarding the recast of Section 77 of the Inam Regulation

Read the E.S.L.'s
Rp. 8/10/19 -

In the question
there arises the
question whether
Inam Regulation
has not been
repealed by
the Mysore
Land Revenue
Code.

Rs 500
19-20

Office of the Deputy Commissioner,
Tumkur District
Dated Tumkur the 20th October 1919

From

Ananda Rao Sirsi, Esq , B A , LL B ,
Offg Deputy Commissioner Tumkur District

To

Ml 68-19-4

B Ramaswamiah Esq B A B L.
Secretary to Government of His Highness
the Maharaja of Mysore Revenue Department
Bangalore

Sir

With reference to our letter [illegible] 3691-700/Ml 68-19-1 dated 15th September 1919 forwarding for opinion the views of the Government Advocate [illegible] regarding the respective jurisdiction of the President of the Municipality and the Magistrate in dealing with cases falling under Sec 77 and 77 A of the Municipal Regulation I have the honour to state that I agree with the opinion expressed by the Government Advocate and Sec 77 A should, be amended by the insertion of the words "or conviction before a Magistrate between" in lines [illegible] of para [illegible] of the same

I have the honour to be
Sir
Your most obedient servant

Offg Deputy Commissioner
Tumkur District

D N

1919-20.

From

The Offg. Deputy Commissioner,
Tumkur District, T u m k u r.

To

The Rev Secretary to Govt of H.H
the Maharaja of Mysore, Bangalore

Dated 20th October 1919

Despatched 21 10 1919

Received

General No
So

Dy Dr. 500
19-20

Enclosure No

Furnishing opinion in the matter
amendment of Sec 77 of the Municipal
Regulation

Memo

No. HC 57 L P19-20

Office of the Deputy Commissioner,
Shimoga District
Dated Shimoga the 12th December 1919

From

S Hiriannaiya, Esquire , M A ,B L ,
Deputy Commissioner,
Shimoga District.

Rl 68-19-5

To

S Ramaswamaiya, Esquire , B A ,B L ,
Secretary to the Government of His Highness
the Maharaja of Mysore, Revenue Department,
Bangalore

Sir,

With reference to your letter No R 3691-700 M1 69-19-1 dated 15th September 1919 regarding the authority of a President of a Municipality to impose fines under section 77 of the Municipal Regulation, I have the honour to state that the words "shall be punishable" occurring in clause 2 of section 77 do not appear to be conclusive that the fines could be imposed only after a judicial trial viz, before a Magistrate having jurisdiction in the case

I have the honour to be,
Sir,
Your most obedient servant,

Hiriannaiya
Deputy Commissioner,
Shimoga District

H R

1919-20

From 153 G

The Deputy Commissioner,
Shimoga District.

To

The Revenue Secretary,
Government of Mysore,
Bangalore.

Dated the 17th December 1919.

o Ite 57 & R 19-20

ncl

---

tates that the words occurring in clause 2 of Section 77 of the Muni Regulation are conclusive regarding imposition of fines by the President of the a municipality

HKS

Office of the Deputy Commissioner,
Kolar District,
Dated, Kolar, the 27th February 1920.

2-3 20

Rel 68-19-9

From

Mr. Zahiruddin Mecci, Esquire, B.A.
Deputy Commissioner, Kolar District.

To

R. Ramaswamayya, Esquire, B.A.,B.L.
Secretary to the Government of His Highness
the Maharaja of Mysore, Revenue Department,
Bangalore.

Sir,

With reference to your letter No R 3697-700/21 68-19-1 dated the 15th September 1919 calling for my views in the matter of the exercise of the powers by the President of the Municipality and the Magistrate respectively in dealing with offences falling under sections 77 and 77 A of the Municipal Regulation, I have the honour to state that it is no doubt theoretically true as suggested by the Government Advocate that it is better to leave the power of fining to Magistrates and take it away from executive Officers who are in the position of prosecutors But if all petty cases of smuggling are to go before Magistrates with the incidental worry, expense and law's uncertainty there is absolutely no doubt that the Municipality will not be able to effectively prevent smuggling

It is I think therefore necessary to confer some power, on Municipalities circumscribed in any manner Government may think necessary to deal with petty cases of smuggling and to levy an amount higher than the ordinary rate of duty which may be called a penal rate or a penalty instead of a fine If some such name is used, there will I think be no objection to Municipal Presidents exercising the power as the objection of the Government Advocate applies only to fines and not to any other levy

23 9 1920

From The Deputy Commissioner
Kolar District

To The Secretary to the
Government of Mysore
Revenue Department
Bangalore

Dated 27th February 1920
Despatched 28th do
Received
General No. 17 of 1920
No.
Enclosure No.

Submitting observations re- the powers of Peace and Magistrates in dealing with offences under Sections 77 & 77 of the Income tax Regulations

Yours faithfully

The levy suggested may be compared to (1) ~~the~~ double railway fare levied by Railway Authorities on persons found travelling without tickets, (2) the penalty imposed by the Deputy Commissioner on documents insufficiently stamped or (3) the penal rate of interest levied on loans not paid on due date for which orders of a Magistrate are not considered necessary

I have the honour to be,

S i r,

our most obedient servant,

Deputy Commissioner,
Kolar District

Ay

D. No 7668
22.4.20

730

OFFICE OF THE PRESIDENT,
CITY MUNICIPAL COUNCIL, MYSORE

Dated 15th April 1920
20

Ml 68-19—11

RAJASABHABHUSHANA DIWAN BAHADUR,
C SRIKANTESVARA AIYAR B A B L
PRESIDENT CITY MUNICIPAL COUNCIL,
MYSORE

To,

B Ramaswamaiya Esquire B A B L,
Secretary to the Government of His Highness
the Maharaja of Mysore Revenue Department

8600-1

Sir,

With reference to your letter No R 3691-700/Ml 68-19-1 dated 15th September 1919 forwarding for expression of my views the opinion of the Government Advocate in the matter of the interpretation of Section 77 of the Municipal Regulation as regards the authority competent to levy a fine under that Section I have the honour to state that the evasion of the payment of octroi duty is an offence under the Municipal Regulations and is to be proved as any other offence Under Section 79 of the Municipal Regulation the Municipal executive have power to seize and sell dutiable articles on non-payment of octroi on demand If Section 77 be so construed as to empower the Municipal Officer to levy a fine for evasion of octroi duty it will give the double power of punishment in the same executive hands which is not conducive to public safety

2 I am therefore in full agreement with the interpretation put upon Section 77 by the Government advocate that the mere non-mention of words " on conviction before a Magistrate "

does not warrant the view that the President has power to levy a fine under that Section

I have the honour to be,
Sir,
Your most obedient servant,

President

MRV

No ———

OFFICE OF THE CITY MUNICIPAL COUNCIL,
Bangalore City dated 21st April 1920

787
-4-

From

B K GARUDACHAR, ESQ,
President, Municipal Council
BANGALORE CITY

Rl 68-19—12

To

B Ramaswamaiya Esq B A B L
Secretary to the Government of
His Highness the Maharaja of Mysore
Revenue Department BANGALORE

S i r

Referring to your letter No R 3691-700/M1 68-19-1 dated 15th September 1919 forwarding for opinion an extract of the views of the Government Advocate in regard to the respective jurisdictions of the President of the Municipality and the Magistrate in dealing with cases falling under - section 77 and 77 A of the Municipal Regulation I have the honour to state that I agree with the views of the Government Advocate in holding that the power of imposing fine could be exercised only by a Magistrate I am of opinion that the sections are clear as they are and require no amendment

I have the honour to be
S i r
Your most obedient servant

PRESIDENT

LR

20 & 8 pt

192

From The Police Assistant
Secy - Municipal Commissioner
Penukonda,

To The Secretary to Govt.
Revenue Department
Penukonda

Dated 21 4 1920
Despatched
Received 23 AP
General No. 263
No.
Enclosure No.

Subject

Powers of the
Municipal President & the
Magistrate in dealing with
offences falling under Sub
Regn Sec 77 & 77 A

Opinion called for
Views of the Govt Advocate

OFFICE OF THE DEPUTY COMMISSIONER, PRESIDENCY
HASSAN DISTRICT.
Dated, Hassan, the 21st April 1920

From

B. VENKOBA RAO, Esq., B.A.,
Deputy Commissioner, President,
HASSAN DISTRICT BOARD.

Rl 68-19-13

To

R. Ramachandraiya, Esquire, B.A., B.L.,
Secretary to the Government of
His Highness The Maharaja of Mysore.
Revenue *Department.*
Bangalore.

Sir,

With reference to your letter No.R.3691-700 M.L. 68-19-1 dated the 15th September 1919 asking for my views on the question of Jurisdiction of the President of the Municipal of a Municipality himself imposing fines under section 77 of the Mysore Municipal Regulation instead of a magistrate as contemplated in section 77 A, I have the honor to state that section 77 of the Municipal Regualtion of 1906 has been construed by the courts as constituting a Criminal offence triable a Magistrate (vide XXI Mysore Chief Court Reports 50 also compare XIX Mysore Chief Court Reports 25)

I do not think that we can go behind the decisions the Chief Court though there is apparently something to say on the other side.

I think also that Section 77 may be suitably amended by the introduction of the words " On conviction before a Magistrate"

I am also of opinion that the President of a Municipality should have power to compound such offences on certain terms and that a suitable provision may be inserted in the Municipal Regulation accordingly.

I have the honor to be,
Sir,
Your most obedient servant,

B. Venkoba Rao
Deputy Commissioner,
Hassan District.

19

From

B VENKOBA RAO, Esq., B.A.,

Deputy Commissioner, Accountant
HASSAN DISTRICT Bangalore.

23 23

To

The Secretary,

to the Government of His Highness the —
Maharaja of Mysore, Revenue Department,
B a n g a l o r e.

Dated 21st April 1920

Despatched 22/4/20

Received

General No R.O.C 634-17
No

Enclosure No

SUBJECT. Misc

Regarding the Question of Jurisdiction of the President of a Taluq Court to try summarily cases of false evidence &c

Dr No 3931 B
2 24

Office of the Deputy Commissioner
Mysore District.
Dated, Mysore, the 9th February 1925.

F. P. Egerton, Esq., B. A.,
Deputy Commissioner, Mysore District,
Mysore.

Mr 68-9-14

D No. 6132
11-2-25

To

B Ramaswamayya, Esq., M. A., B.L.
Secretary to the Government of His Highness
the Maharaja of Mysore Revenue Department,
Bangalore.

Sir,

With reference to your letter No R.3071-707/Rl.68-10-F dated 15th September 1910 inviting my opinion in the matter of dealing with cases falling under Sections 77 and 77A of the Municipal Regulation I have the honour to state that Section 77 of the Municipal Regulation does not specify the authority by which the punishment provided therein may be inflicted in cases falling under that Section. As a new section Viz. 77A was added to Section 77 it cannot be said that the former was in modification of the latter which has also been retained. It has therefore to be inferred that cases falling under Section 77 are not quite identical with those mentioned in Section 77A

2. The procedure laid down in Section 77A may cause worry and waste of energy which arise by a prosecution before a Magistrate, and smuggling of dutiable goods cannot be effectively prohibited and the offender brought to book then and there. The objection in combining the functions of a Prosecutor and Judge in one can hardly create doubt to reason, but there should be tolerance to settle the right principles to absurd and unnecessary lengths out of proportion to the importance of the case. A rigid principle adherence to principle would pervade all human activity. Some kind of opinion as to the discretion of a Prosecutor and Judge may be left to

5-335

10

From The Deputy Commissioner
Tyrone

To The Secretary to the Govt.
of P. I. the Panjab
Revenue Department.

Dated 9th February
Despatched
Received
General No. 82 dtd 3 FEB 192
No.

Enclosure No.

Subject.

Submits opinion in the matter of dealing with cases under sections 77 and 77A of the Panjab Land Regn

92 6802

From

The Deputy Commissioner,
Kadur District.

To

The Secretary to the Government of
His Highness the Maharaja of Mysore,
Revenue Department,
BANGALOR

Dated 6th April 1926
Despatched Revenue
Received 17-APR
General No 92 Dis 950
No 24

Enclosure No —

SUBJECT

Furnishing opinion in matter of amending Sec 77 of the Village Munsiffs Regulations

— — — — —

...de providing penalties for offences, contained in Chapter IX of ... Regulation, the words "on conviction before a Magistrate" do ... t appear, and if the argument of the President were applied, ... would have power to levy the penalty in every one of those ...ses This would be plainly absurd However, as uniformity ... wording is one of the points to be observed in the framing of a Regulation, Section 77 A may if deemed necessary, be modified by the omission of the words "on conviction before a Magistrate"

I have the honour to be

Sir,

Your most obedient servant

K Krishna Rao

Deputy Commissioner,
Mercara District

D S R